

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 935

Introduced by Assembly Member Blumenfield

February 18, 2011

An act to add *and repeal* Section 27389~~40~~ of the Government Code, relating to foreclosures, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as amended, Blumenfield. Foreclosures: foreclosure mitigation charges.

Existing law sets forth the criteria for procedures for the foreclosure of property, including the filing of various notices with the county recorder, and generally sets forth the duties of the county recorder in this regard.

This bill would, *until January 1, 2015, for loans already originated as of the date that this bill becomes effective*, with some exceptions, prohibit a notice of trustee's sale from being accepted for filing with the county recorder until the mortgage servicer pays a foreclosure mitigation charge of \$20,000. It would require the county recorder to keep the moneys in trust until a notice of rescission is filed, at which time the moneys would be returned to the mortgage servicer, or until a trustee deed of sale is filed, at which time the moneys would be transmitted to the Treasurer for deposit in the Foreclosure Mitigation Fund, which would be created by the bill; the interest earned on the moneys would be retained by the county recorder in either case. The

fund would be continuously appropriated for distribution by the Treasurer to local agencies for specified purposes.

By imposing a new duty on county recorders in collecting this fee, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 27389 is added to the Government Code,
2 to read:

3 27389. (a) (1) Notwithstanding Section 23182 of the Revenue
4 and Tax Code and any other provision of law, and subject to
5 paragraph (2), no notice of trustee's sale shall be accepted for filing
6 with the county recorder until the mortgage servicer, as defined
7 in subdivision (q) of Section 50003 of the Financial Code, pays a
8 foreclosure mitigation charge of *5 percent of the price for which*
9 *the house was last sold. This charge shall not exceed* twenty
10 thousand dollars (\$20,000). The cost of this charge may not be
11 passed on to borrowers.

12 (2) *Mortgage servicers shall only be required to pay the charge*
13 *described in paragraph (1) for loans that have already been*
14 *originated as of the effective date of the act that added this section.*

15 ~~(2)~~

16 (3) (A) A mortgage servicer shall be exempt from paying the
17 foreclosure mitigation charge described in paragraph (1) ~~if it any~~
18 *of the following apply:*

19 (i) *The mortgage servicer is servicing a loan for a mortgage*
20 *lender with assets below ten billion dollars (\$10,000,000,000).* ~~In~~
21 ~~addition, a mortgage servicer shall be exempt from paying the~~
22 ~~foreclosure mitigation charge for any loans~~

23 (ii) *The underlying loan is owned by any local or state*
24 *government agency, as the intent of this section is to recoup some*
25 ~~of the foreclosure costs currently being borne by the taxpayers of~~
26 ~~this state. agency.~~

1 (iii) *The mortgage servicer is a credit union organized under*
2 *federal law or the laws of any state, or is servicing a loan for which*
3 *a credit union is the mortgagee, lender, or beneficiary of the deed*
4 *of trust, at the time the notice of default is recorded.*

5 (iv) *The mortgage servicer is servicing a fixed-rate prime*
6 *mortgage of at least 15 years of duration.*

7 (v) *The mortgage servicer has done everything possible to*
8 *modify the existing loan on the property, including, but not limited*
9 *to, offering the current property owner a principal write down on*
10 *the loan amount that lowers the remaining loan amount to the*
11 *current market value of the property.*

12 (4) *If paragraph (3) applies, the mortgage servicer shall furnish*
13 *a declaration to the county recorder when filing the notice of sale*
14 *stating that it is exempt from the foreclosure mitigation charge*
15 *and setting forth the facts to support the exemption.*

16 (B) If a mortgage servicer is exempt from paying the foreclosure
17 mitigation charge pursuant to subparagraph (A), the mortgage
18 servicer shall furnish a document to the county recorder when
19 filing the notice of sale indicating that the loan is owned by a
20 mortgage lender with assets below ten billion dollars
21 (\$10,000,000,000) or that the loan is owned by a local or state
22 government agency and therefore exempt from the foreclosure
23 mitigation charge.

24 (b) (1) The county recorder shall hold the moneys collected
25 pursuant to subdivision (a) in trust until either of the following
26 occurs:

27 (A) If a notice of rescission is filed with respect to the property,
28 the county recorder shall return the moneys to the mortgage
29 servicer, except as provided in paragraph (2).

30 (B) If a trustee deed upon sale is filed with respect to the
31 property, and except as provided in paragraph (2) the county
32 recorder shall transmit the moneys to the Treasurer for deposit in
33 the Foreclosure Mitigation Fund, which is hereby established as
34 a special fund in the State Treasury.

35 (2) The county recorder may retain any interest earned while
36 the moneys were held in trust pursuant to this subdivision, to cover
37 administrative costs.

38 (c) (1) Moneys in the Foreclosure Mitigation Fund are hereby
39 continuously appropriated for distribution by the Treasurer to local

1 agencies, in the same amount as the applicable counties' respective
2 deposits.

3 (2) Moneys distributed to local agencies pursuant to this
4 subdivision shall be used as follows:

5 (A) Twenty percent for K-12 and community college purposes.

6 (B) Twenty percent for public safety purposes, *at least half of*
7 *which shall be allocated to fire protection services. The remaining*
8 *portion shall be allocated to other public safety purposes,*
9 including, but not limited to, local police; ~~and county sheriffs; and~~
10 ~~local fire protection.~~

11 (C) Twenty percent for redevelopment activities within the
12 jurisdiction of the local agency, including, but not limited to, the
13 construction of affordable housing.

14 (D) Twenty percent for mitigating the effects of foreclosures
15 on the community, including, but not limited to, reimbursement
16 of the county recorder's costs in collecting the charge imposed
17 pursuant to subdivision (a).

18 (E) Twenty percent for loans for small businesses within the
19 jurisdiction of the local agency.

20 *(d) This shall remain in effect only until January 1, 2015, and*
21 *as of that date is repealed, unless a later enacted statute, that is*
22 *enacted before January 1, 2015, deletes or extends that date.*

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 a local agency or school district has the authority to levy service
26 charges, fees, or assessments sufficient to pay for the program or
27 level of service mandated by this act, within the meaning of Section
28 17556 of the Government Code.